No. 83-724

IN THE

Supreme Court of the United States

October Term, 1983

KATHRYN R. ROBERTS, Acting Commissioner, Minnesota Department of Human Rights; HUBERT H. HUMPHREY III, Attorney General of the State of Minnesota; and GEORGE A. BECK, Hearing Examiner of the State of Minnesota,

Appellants,

vs.

THE UNITED STATES JAYCEES, a non-profit Missouri corporation, on behalf of itself and its qualified members,

Appellee.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF FOR COMMUNITY BUSINESS LEADERS AS AMICUS CURIAE

ELDON J. SPENCER, JR.
O'NEILL, BURKE AND O'NEILL, LTD.
(Counsel of Record)
MICHAEL B. BRAMAN
CHRISTINE L. MEUERS
Business address of above Counsel:
800 Norwest Center
55 East Fifth Street
St. Paul, Minnesota 55101
(612) 227-9505

Dated: February 22, 1984

224-7631 — Review Publishing Co., 287 E. 6th St., St. Paul, Minn. 55101 — 224-7631

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-724

KATHRYN R. ROBERTS, Acting Commissioner,
Minnesota Department of Human Rights;
HUBERT H. HUMPHREY III, Attorney General
of the State of Minnesota; and
GEORGE A. BECK, Hearing Examiner
of the State of Minnesota,

Appellants,

vs.

THE UNITED STATES JAYCEES, a non-profit
Missouri corporation, on behalf of
itself and its qualified members,

Appellee.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

MOTION BY COMMUNITY BUSINESS LEADERS FOR LEAVE TO FILE A BRIEF AMICUS CURIAE

Introduction

Pursuant to Rule 36 of the Rules of the Supreme Court of the United States, Community Business Leaders respectfully moves this Court for leave to file the accompanying brief *amicus curiae* in support of the position of the appellants in this case.

It should be noted that appellants have consented to such a filing, and their written consent is on file with the Court. However, the United States Jaycees has refused to consent to such a filing. Therefore, this motion is brought.

Identity and Interest of Amicus Curiae

Community Business Leaders is a newly renamed Minnesota nonprofit corporation which prior to January 12, 1984, was called the "Saint Paul Jaycees". On January 12, 1984, the United States Jaycees voted to revoke the Charter of the Saint Paul Jaycees because the Saint Paul Chapter admitted women to full membership status, which meant that women had the right to vote and hold office within the organization. This was contrary to the United States Jaycees By-Laws.

Pursuant to amendments to its Articles of Incorporation, the corporation's name automatically changed to "Community Business Leaders" upon revocation of its Saint Paul Jaycees' Charter.

Community Business Leaders' interest in this case essentially is four-fold:

First, reversal of the court of appeals' decision in this matter would afford Community Business Leaders members the possibility of reaffiliation with the United States Jaycees without violating their principles. Assuming the Jaycees opt to continue operations in Minnesota if this Court reverses the court of appeals and reinstates the order of the District Court for the District of Minnesota, then one of two outcomes could occur: (1) Community Business Leaders would be eligible for either reinstatement of the Saint Paul Jaycee Charter under terms which would allow its women members equal membership privileges; or (2) its members could establish a new Jaycee Chapter or join any new chapter in Saint Paul which may have been established by the time a final decision in this case is issued, in either case with assurance that their charter would not be revoked for providing full membership status for members of both sexes.

Secondly, affirmance would allow Community Business Leaders the possibility of regaining for their organization the name recognition the "Jaycee" name had in the Saint Paul community, recognition that members of Community Business Leaders have helped earn for the organization. Such name recognition is extremely important to the corporation's members because they run various community projects which require both funding from local businesses and community support. These projects are more successfully run and better attended when the "Jaycee" name is associated with the projects, because of the high degree of recognition accorded that name. Examples of these projects include: (1) the annual Children's Shopping Tour, where indigent children are taken shopping to buy Christmas presents for their families, taken to lunch, and offered the opportunity to select Christmas presents for themselves; (2) the Ramsey County Nursing Home Project, a get-together with the elderly at the Ramsey

County Nursing Home; (3) the annual handicapped children's fishing trip; and (4) the Big Brothers and Big Sisters outing to a Minnesota Twins baseball game.

Third, a favorable decision by this Court will allow Community Business Leaders the possibility of resuming use of the Jaycee name to promote membership in its organization. People moving into the Saint Paul community, who seek to become involved in the community, may not know the name of "Community Business Leaders". The "Jaycee" name, on the other hand, has such wide national recognition that people moving into the community from out of state would more easily identify the organization as a place for fulfilling their desire for community involvement.

Community Business Leaders' final interest is that this Court's decision reflect the sentiment of its members and the Saint Paul community. The organization's vote on this matter reflected near-unanimity among both men and women members that women members, who presently comprise approximately 40% of both overall and Board of Directors membership, be allowed to retain their positions and voting privileges. Community support has included newspaper editorials, resolutions by the Saint Paul Chamber of Commerce and the Saint Paul City Council, and direct encouragement from major companies in the Saint Paul area.

Question to be Addressed by this Amicus Curiae

Consistent with its interests indicated above, Community Business Leaders' attached brief *amicus curiae* is devoted to demonstrating: (1) that the court of appeals' decision rejecting Minnesota's attempt to implement a civil right of freedom from discrimination in "public" membership organizations like the Jaycees ignored important record evidence relating to compelling interests of present and former Jaycee members which the state, through its Human Rights Act, seeks to promote; and (2) that the court of appeals' decision failed to take sufficient note of record evidence indicating several unique aspects of the Jaycee organization distinguishing it from other, less commercially oriented private membership organizations.

Community Business Leaders has identified numerous facts contained in the record before this Court which emphasize: (1) the compelling nature of the statutory scheme struck down by the Eighth Circuit Court, as well as (2) the presence of unique characteristics in the Jaycee organization which differentiates it from other types of membership organizations whose more selective membership practices and other characteristics may warrant greater insulation from state anti-discrimination legislation. Certain of these facts were either not noted by Appellants in their lower court brief, or not stressed to the extent Community Business Leaders feels appropriate. Therefore, Community Business Leaders respectfully requests that this Court grant it leave to file its attached brief *amicus curiae* in order to more fully explicate these facts

which are particularly crucial to any constitutional balancing which this Court may determine is required.

Respectfully submitted,

/s/ ELDON J. SPENCER, JR.

ELDON J. SPENCER, JR.
O'NEILL, BURKE AND
O'NEILL, LTD.
(Counsel of Record)
MICHAEL B. BRAMAN
CHRISTINE L. MEUERS
800 Norwest Center
55 East Fifth Street
St. Paul, Minnesota 55101
(612) 227-9505

VERIFICATION

The factual statements included in the above Statement of Identity and Interest of Amicus Curiae are true to the best of my knowledge and belief.

/s/ ANNE FORD NELSON

ANNE FORD NELSON
President, Community Business Leaders

Subscribed and sworn to before me
this 22nd day of February, 1984.

/s/ MICHAEL B. BRAMAN

Notary Public

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The United States Jaycees ("Jaycees") is a corporation incorporated under the laws of the State of Missouri (H.R. Vol. II, p. 6).[1]

In 1979, the corporation had approximately 300,000 members and approximately 7,500 chapters nationwide. (D.C., pp. 12, 56). A chapter is a local arm or vehicle through which the Jaycee memberships are sold. From each membership sold, the Jaycees receive $4.00. (H.R. Vol. I, pp. 72-76, 90-91).

A local chapter of the Jaycees is chartered upon submission to the Jaycees of a list of 20 male members along with a set of By-Laws which are in compliance with the By-Laws of the Jaycees (H.R. Ex. 1, pp. 4-5). The Jaycees retains the right to revoke a charter of a local chapter for "good cause". (H.R. Ex. 1, p. 7).

The Jaycees By-Laws draws a distinction between two types of members within the Jaycee organization: individual members, and associate individual members. (H.R. Ex. 1, pp. 3-4). "Individual members" include all male members between the ages of 18 and 35. An "associate individual member" is defined basically as any member who is not an individual member. The definition of an associate individual member further provides that such a member does "not have the right to vote or the right to be an officer or director of the United States Jaycees, State Organization Member, or a Local Organization Member." (H.R. Ex. 1, pp. 3-4).

---

[1] The Hearing Examiner's record will be referred to throughout this Brief by the letters "H.R.". The transcript of proceedings before the federal district court will be referred to throughout this Brief by the letters "D.C.". Exhibits to the record bear the abbreviation "Ex." after the venue designation.

A primary purpose of the Jaycees is to develop each member to his or her fullest potential. (H.R. Vol. I, p. 87). As a Jaycees Vice President testified, the Jaycees provides its members the opportunity to practice leadership and organizational skills, and attempts to "[b]uild tomorrow's leaders today." (D.C., p. 67). The organization's letterhead proclaims that it is a "Leadership Training Organization". (D.C., Plaintiff's Ex. 23). A number of former local Jaycee officers and directors testified that for them, the Jaycees was very successful in these areas. (See discussion, Part I.C., *infra.*)

In December, 1978, eight members from the Saint Paul and Minneapolis Jaycee chapters brought charges under the Minnesota Human Rights Act (Minn. Stat. Ch. 363 (1982)) ("the Act") before the Minnesota Department of Human Rights ("the Department"). These charges alleged that the Jaycees was engaging in an unfair discriminatory practice prohibited by Subdivisions 3, 6 and 7 of the Act (Minn. Stat. § 363.03 (1982)).[2] The allegations stemmed from threats by the Jaycees to revoke the charters of these local chapters because they allowed women full membership privileges of voting and holding office, contrary to the By-Laws of the Jaycees.

---

[2] Minn. Stat. § 363.03, Subd. 3 reads, in relevant part as follows:

"Public accommodations. It is an unfair discriminatory practice: To deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of race, color, creed, religion, disability, national origin or sex."

Minn. Stat. § 363.03, Subd. 7 reads, in relevant part, as follows:

"Reprisals. It is an unfair discriminatory practice for any . . . public accommodation . . . to intentionally engage in any reprisal against any person because that person:

(1) Opposed a practice forbidden under this chapter . . . ."

Acting on these complaints, and after a hearing, a state hearing examiner found the Jaycees to be a public accommodation within the meaning of Minn. Stat. § 363.01 Subd. 18 (1982). *United States Jaycees v. McClure*, 534 F. Supp. 766, 767 (D. Minn. 1982). As a consequence, the examiner enjoined the Jaycees from taking any adverse action against the Saint Paul Jaycees and the Minneapolis Jaycees on the basis of each of their policies of according full membership rights to their women members. *Id.* at 768.

The Jaycees filed suit in United States District Court for the District of Minnesota ("the district court"), contending that the Act as applied to the organization's membership policies was an unconstitutional infringement upon its members' alleged rights of association under the first and fourteenth amendments to the United States Constitution. Additionally, the Jaycees claimed that the Statute was vague, overbroad, and violated the Fourteenth Amendment's Equal Protection Clause.

The district court certified to the Minnesota Supreme Court the question: "Is The United States Jaycees a 'place of public accommodation' within the meaning of Minn. Stat. § 363.01 Subdivision 18?" In its opinion, the Minnesota Supreme Court determined that the Jaycees is a "public business facility" falling within the statutory definition of "place of public accommodation." *United States Jaycees v. McClure*, 305 N.W.2d 764 (Minn. 1981).

In reaching its decision, the Minnesota Supreme Court, after extensively reviewing the legislative history of the Act, found that the Jaycees was clearly a business by reason of the fact that it sold individual memberships, with accompanying privileges, and that it was a "public business" in that it unselectively and vigorously sold memberships to the public. *Id.* at 771. Finally, the court determined that the Jaycees was

a business facility, since a business facility could be found at each site where a membership was sold. *Id.* at 772.

Addressing the constitutional issues raised by the Jaycees, the district court held that the Act was not void for vagueness because "a person of ordinary intelligence can understand what is prohibited by the Statute as construed". *United States Jaycees v. McClure*, 534 F. Supp. 766, 773 (D. Minn. 1982). The Court also found the Act was not unconstitutionally overbroad due to the construction placed upon it by the Minnesota Supreme Court, which limited the application of the Act to public business facilities which practiced sex discrimination. The Court found that there was "insufficient evidence in the record" to determine whether the Act would apply to other groups, as asserted by the Jaycees. *Id.* at 773. Finally, the district court found no protection legally available to alleged associational rights, where those alleged rights involve invidious discrimination. *Id.* at 770.

The Jaycees appealed to the United States Circuit Court of Appeals for the Eighth Circuit ("the appellate court"), where a divided court reversed the decision of the district court. The appellate court majority determined that the State of Minnesota's interest was not sufficiently compelling to outweigh the "incursion" on what the court determined to be a constitutionally protected right of association applicable to the Jaycees. *United States Jaycees v. McClure*, 709 F.2d 1560, 1578 (8th Cir. 1983). Moreover, the appellate court found that the Minnesota Supreme Court had interpreted the Act in such a way that it must be determined void for vagueness. *Id.* at 1578.

After Appellants' Motion for a Rehearing En Banc was denied by an equally divided court, appellants appealed to this Court, which noted probable jurisdiction. 52 U.S.L.W. 3497 (U.S. Jan. 9, 1984) (No. 83-724).

SUMMARY OF ARGUMENT

I. The legislative policy contained in the present version of the Minnesota Human Rights Act has two parts. The first part addresses the importance to the State of securing for its citizens freedom from gender-based discrimination in public accommodations, and the second declares the legislature's intention to create a "civil right" for Minnesotans to obtain full and equal utilization of public accommodations without regard to gender. These rights may be enforced either by action taken by the State, or by a direct right of private civil action created under the statute.

The appellate court balanced these interests against what it found to be constitutionally cognizable associational rights of the Jaycees. In doing so, however, the appellate court misapplied precedent established by this Court and other courts for carrying out this balancing, and misconstrued the interests of the State of Minnesota. Additionally, the appellate court either ignored or gave insufficient consideration to the adverse impact upon the civil rights of Minnesotans guaranteed by the Minnesota Human Rights Act.

II. The Jaycees were correctly characterized as a "public accommodation" by the Minnesota Supreme Court on the basis of identifiable criteria drawn from an established body of case law. As such, the Act is not unconstitutionally vague because the Jaycees can look to those standards and that body of case law in determining what they would need to do if they want to remove their organization from the State's restrictions on sex discrimination in public accommodations. Additionally, the line drawn by the Minnesota Supreme Court's interpretation of the Minnesota Human Rights Act between "public" and "private" membership organizations is a principled one, which does not lend itself to regulation of

membership practices of those organizations which have not voluntarily thrust themselves on a mass membership basis into the commercial marketplace.

III. The Jaycees raised an equal protection argument which was not considered by either the district court or the appellate court. However, should this Court address that claim, the Minnesota Supreme Court's opinion contains a statutory interpretation drawing a principled and constitutional basis for distinguishing between "public" and "private" accommodations.

ARGUMENT

I. The State of Minnesota's purpose in protecting and promoting the civil rights of all its citizens is a compelling one which outweighs whatever constitutional protection might otherwise be afforded the associational rights of the Jaycees.

A. The Minnesota Human Rights Act Reflects a State Policy Placing High Value on Protecting Citizens from Discrimination on the Basis of Sex.

The District Court for the District of Minnesota ("the district court") analyzed the purposes clause of the Minnesota Human Rights Act ("the Act") in light of both the Minnesota Supreme Court's interpretation of the scope of the Act's "public accommodation" section and the legislative history of that section. The district court concluded that the Minnesota legislature's policy reflected in the Act is "to prohibit sex discrimination to the same extent as racial discrimination." *United States Jaycees v. McClure*, 534 F. Supp. 766, 771 (D. Minn. 1982). As the district court noted, "protection of citi-

zens from discrimination on the basis of sex is a legitimate interest . . . which [the State of Minnesota] has chosen to value highly." *Id.* at 772.

The Act's purposes are set forth in Subdivisions 1 and 2 of Minn. Stat. § 363.12 (1982). Subdivision 1 of the Act enunciates the State's policy to secure for its citizens freedom from discrimination on the basis of sex in a number of areas, including access to public accommodations. This policy is based on a stated premise that such discrimination "threatens the rights and privileges of the inhabitants of the state and menaces the institutions and foundations of democracy." Minn. Stat. § 363.12, Subd. 1 (1982).

Subdivision 2 of the Act declares as a "civil right" of Minnesotans the opportunity to obtain, *inter alia*, "full and equal utilization of public accommodations" without discrimination on the basis of sex. Minn. Stat. § 363.12, Subd. 2 (1982).

The Act provides rights of action both to the State in order to promote and protect its public policy against discrimination in public accommodations (Minn. Stat. § 363.06 (1982)), and to any person seeking redress for deprivation of his or her civil rights by means of unfair discriminatory practices. Minn. Stat. § 363.14 (1982). The unifying principle underlying the Minnesota Human Rights Act is thus one of promoting an environment within the state whereunder Minnesotans of any sex, race or creed will have equality of opportunity and access to those institutions which have acquired through their own practices an identifiable degree of significance in the consumer or commercial marketplace.

Because of the significance of the areas addressed in the Act—employment, housing, real estate, public accommodations, public services and educational institutions—Minnesota has determined that discrimination in access to these institu-

tions deprives those of its citizens denied such rights of more than just the right to walk in the door of such institutions. Rather, the very "institutions and foundations of democracy" are "menaced" when access to institutions of such public significance is denied. Minn. Stat. § 363.12, Subd. 1 (1982).

The record in this case demonstrates that affirmance of the appellate court's decision, permitting the Jaycees to exclude women from equal membership rights, would result in deprivation of the very type of fundamental civil rights which the Minnesota legislature has declared it the State's policy to protect and promote. As will be discussed in Part I.C., *infra*, the record further demonstrates that the rights of access protected by the statute are inextricably interwoven with such fundamental, personal rights as those of free speech and travel which have long been accorded the highest priority by this Court.

The balancing of these respective interests of the State and its citizens against the alleged associational rights of the Jaycees will be addressed in the two sections which follow.

B. The State of Minnesota's interest in free and equal access to public accommodations for all its citizens is similar to interests which have been recognized as compelling by this Court and other courts.

If First Amendment rights to free association of the Jaycees are compromised by the Minnesota Human Rights Act, then in order for this legislation to be upheld, the State must demonstrate a sufficiently important interest and employ means closely drawn to avoid unnecessary abridgement of associational freedom. *Buckley v. Valeo*, 424 U.S. 1, 25 (1976). It must also be remembered, however, that "the right to asso-

ciation [is not] absolute". *United States Civil Service Comm'n v. National Ass'n of Letter Carriers*, 413 U.S. 548, 567 (1973).

The State of Minnesota's interest in free and equal access to public accommodations for all its citizens is the type of interest that this Court and other courts have long recognized as compelling. In fact, this Court in some circumstances has held equal access to public accommodations to outweigh infringements even on "core" First Amendment rights.

For example, in *Railway Mail Ass'n v. Corsi*, 326 U.S. 88 (1945), this Court found that a New York statute requiring labor organizations not to deny any person membership by reason of race was constitutional. This Court, in upholding the statute, found that the statute did not "offend the due process clause of the Fourteenth Amendment as an interference with [a labor union's] right of selection to membership." *Id.* at 93.

In *Brown v. Board of Education*, 347 U.S. 483 (1954), this Court recognized that free and equal access to public schools was an interest to be accorded the highest priority. And, in *Norwood v. Harrison*, 413 U.S. 455, 470 (1973), this Court stated:

> "Invidious private discrimination may be characterized as a form of exercising freedom of association protected by the First Amendment, but it has never been accorded affirmative constitutional protections."

Accord Runyon v. McCrary, 427 U.S. 160, 176 (1976) ("[T]he constitution places . . . no value on discrimination").

A footnote to the above discussion in *Norwood v. Harrison*, *supra*, cites 42 U.S.C. § 3601, *et seq.*, as an example of "other significant contexts" in which Congress has made discrimination unlawful. This statute, which bars race and gender dis-

crimination in private housing transactions, was recently upheld against a First Amendment challenge in *United States v. Bob Lawrence Realty, Inc.*, 313 F. Supp. 870 (N.D. Ga. 1970), *aff'd*, 474 F.2d 115 (5th Cir. 1973), *cert. denied*, 414 U.S. 1087 (1973). In its ruling, the lower court determined that "any inhibiting effect that [the statute] may have upon speech is justified by the government's interest in protecting its citizens from discriminatory housing practices and is not violative of the First Amendment." 313 F. Supp. at 872. *Accord Barrick Realty, Inc. v. City of Gary, Indiana*, 354 F. Supp. 126, 135 (N.D. Ind. 1973), *aff'd*, 491 F.2d 161 (7th Cir. 1974) (rejecting First Amendment and "right to travel" claims).

The interest in obtaining free and equal access to places of public accommodation for all citizens is thus a compelling interest which has been accorded high priority by this and other Courts, even where it has in some way impinged upon other parties' First Amendment rights.

In the case before this Court, the district court found no need for resort to the detailed constitutional balancing involved in the previously cited cases. Instead, the court found the Jaycees to be engaged in the type of "invidious private discrimination" which deprives them of affirmative constitutional protection under *Norwood v. Harrison*, *supra*. *United States Jaycees v. McClure*, 534 F. Supp. 766, 771 (D. Minn. 1982).

This Brief will not analyze the disagreement between the district and appellate courts over whether the Jaycees' activities involve judicially cognizable associational rights. Instead, this Part and the following Part (I.C.) of the Brief analyze, respectively, some of the case law and record evidence supporting the district court's alternative holding (534 F. Supp. at 771) that, even if the Act impinges on the Jaycees' associational rights, the Minnesota legislature's purposes are sufficiently compelling to override the Jaycees' claimed asso-

ciational rights. Additionally, the rights of individuals within the scope of the Act's protection must be taken into account in any constitutional balancing which may be required.

The appellate court, we respectfully submit, failed to comprehend the full extent to which reversal of the district court's decision would undermine Minnesota's interests in the application of its Human Rights Act. Additionally, the appellate court misapplied a number of this Court's precedents to the facts of this case.

The appellate court offered several reasons for determining that Minnesota's statutory scheme should not prevail over the Jaycees' asserted rights. First, the court indicated that Minnesota's interest in banning discrimination in public accommodations would be less impacted by an adverse court decision in this case than if a statute aimed only at discrimination in membership policies by groups of a certain size had been held unconstitutional, since the Act would still be available to strike down other forms of discrimination. *United States Jaycees v. McClure*, 709 F.2d 1560, 1573 (8th Cir. 1983). It is very difficult to understand why a state's interest in all portions of a broad remedial statute such as the Minnesota Human Rights Act should be less compelling than if the legislation had focused on only a single aspect of the problem, which the circuit court's strained analysis suggests might have led it to a different result. *Id.*

The appellate court also suggested that the State's interest was weaker because the Act is selectively enforced. *Id.* at 1573. However, there is simply no evidence in the Record to suggest any selective enforcement. Further, even if the Minnesota Supreme Court had been required to rule on attempts to enforce open, gender-neutral membership practices on other organizations besides the Jaycees, the Record establishes several unique attributes of the Jaycees which distinguish it from more traditional private associations, including the Kiwanis. *See* Part II. B., *infra*.

Finally, the appellate court stated, without citing specific authority, that once a First Amendment challenge is raised to a statutory scheme, the burden of proving a justifiable interference with First Amendment rights shifts to the government. *Id.* at 1576. However, as the appellate court's dissent points out, a large body of case law suggests that shifting the burden of proof is not appropriate where, as in the case at hand, a statute is aimed at the conduct or practice of discrimination, and the burden it imposes on a party's asserted right of association ". . . has, at best, a hypothesized nexus to any deterrence of other protected First Amendment rights." *Id.* at 1581 (Lay, J., dissenting).

This court has recently held that parties asserting the constitutionality of gender-based classifications must show an "extremely persuasive justification" for such classification. *See Mississippi University for Women v. Hogan*, 458 U.S. 718, 724 (1983).[3] The appellate court did not require such a

[3] The majority and dissenting opinions in *Mississippi University for Women v. Hogan* sharply disagreed on the question of whether otherwise equal educational opportunities could be made unequal by reason of locational convenience. Additionally, the *Mississippi University for Women* case involved a challenge to alleged discrimination by a public institution of higher education. Nevertheless, both majority and minority opinions in that case were in agreement that separate provision of educational opportunities would be struck down unless a showing could be made that such opportunities were truly equal for both sexes. *Accord* (on this point) *Vorchheimer v. School Dist. of Philadelphia*, 532 F.2d 880 (3d Cir. 1976), *aff'd*, 430 U.S. 730 (1977). In the case before us, the record evidence clearly establishes the absence for many women of leadership opportunities in other organizations which would be as effective for their professional advancement as those provided by the Jaycees. Where a membership organization has voluntarily engaged in the substantial degree of involvement in the commercial marketplace necessary to make it a "public accommodation" under Minnesota law, such a party reasonably should be expected to bear a correspondingly greater burden of proof in establishing the absence of harm to a protected class because of availability of alternative, allegedly equivalent opportunities.

justification, suggesting instead that the State of Minnesota could express its antipathy to the Jaycees' discriminatory practices in a number of ways the court suggested would be less intrusive on the Jaycees' freedom of association. *United States Jaycees v. McClure*, 709 F.2d at 1573. However, this analysis is without support in the record and ignores the Minnesota legislature's implicit determination that nothing works to end discrimination in public accommodations like banning discrimination in public accommodations. *See, e.g.*, Minn. Stat. §§ 363.071, Subd. 2 (1982). Moreover, as will be discussed in the following section (Part I.C.), even if those means were equally effective ones for the State of Minnesota to achieve its purpose of a more discrimination-free marketplace, they would hardly be beneficial to women Jaycee members whose individual statutory rights to freedom from gender-based discrimination are also established and protected by the Act.

C. The Minnesota Human Rights Act promotes and fosters such rights of the State's citizens as those of free speech and travel, long recognized by this Court as fundamental, and interwoven in this case with the specific statutory rights created.

While the State of Minnesota's interest in maintaining its statutory framework for combating discrimination in public accommodations and institutions is in itself a compelling interest, it is not the only set of interests created or promoted by the Minnesota Human Rights Act. As noted in part A. of this section, the Act's purposes include the establishment of a civil right for every Minnesotan to full and equal access to public accommodations, a right which, along with others

created by the Act, is enforceable under the Act's private civil action section.

The rights of citizens to be free from discrimination in jobs, housing, and institutions or organizations with sufficient commercial prominence to qualify as "public accommodations" are, of course, important rights in and of themselves. As important as they are, however, there are even more basic rights—the rights of free speech and travel—which the record in this case demonstrates are interwoven with the specific statutorily protected rights.[4] These additional rights are fostered and promoted by the enforcement of the statute at issue.

Although, the appellate court determined that Minnesota's ban on discrimination by the Jaycees violated that organization's First Amendment rights of association "without significant justification," the majority conceded the compelling nature of the State's interest in "clear[ing] the channels of commerce of the irrelevancy of sex" and making sure that goods and services and advantages in the business world are available to all on an equal basis. *United States Jaycees v. McClure*, 709 F.2d 1560, 1572, 1578 (8th Cir. 1983). However, the appellate court did not find the asserted interest sufficiently compelling under the particular "circumstances of this case." *Id.* at 1576. The court specified that "if the record showed that membership in the Jaycees was the only practicable way for a woman to advance herself in business or professional life, a different sort of weighing would have to take place, and such a statute might be upheld." *Id.* at 1573.

---

[4] These fundamental individual freedoms have, of course, long been recognized in the opinions of this Court. *See, e.g., Palko v. Connecticut*, 302 U.S. 319, 326-327 (1937), *rev'd on other grounds, Benton v. Maryland*, 395 U.S. 784 (1969) (free speech); *Kent v. Dulles*, 357 U.S. 116, 125-126 (1958) (right to travel).

The record, however, expressly shows that there really are no other organizations with comparable professional development and related opportunities for women. (*See, e.g.*, H.R. Vol. I, pp. 193-194). The very prominence and size which the Jaycees have sought and attained has given their training unique value for employees and unique recognition in the eyes of employers. There is much in the record to suggest that the Jaycees' prominence in the leadership training area, and not the organization's occasional public policy pronouncements, is the dominant characteristic employers associate with the Jaycees in encouraging participation by their employees.

For example, Ms. Kathryn Ebert testified that her service as a Minneapolis Jaycee Vice President was her "most valuable experience" during her membership in the Minneapolis Jaycees. (H.R. Vol. I, p. 197). Her experience as a Vice President and member of the Board of Directors offered her the opportunity to "interface with all of the Board members [and] . . . communicate with the Board of Directors in a leadership direction". (H.R. Vol. I, p. 191). She also stated that as a Vice President she had supervisory responsibility over four committees, which meant she was "supervising [approximately] one hundred people" and "learn[ing] how to draw out their talents." (H.R. Vol. I, pp. 190, 192-193).

Moreover, because of her involvement with the Minneapolis Jaycees, she was promoted in her job in a large retail store from work of an "individual nature" to work in which she had to deal with a "team [of] people" and "motivate them" and "communicate with clients". (H.R. Vol. I, pp. 191-192).

Similarly, the President of the Minneapolis Jaycees, Mr. Valdis Vavere, testified that being an officer or director provides women with increased speech opportunities for expression in group settings that they would not enjoy as an associate member. (*See* H.R. Exhibit 1). Mr. Vavere explained that

the management and speaking skills gained as a director were "more sophisticated" than the skills experienced as a program chairman, the highest level available to associate members. (H.R. Vol. I, pp. 160-161).

The testimony of Ms. Kathleen Hawn likewise indicates how her speaking and organizational skills were developed as a Jaycee Director. She testified that as an officer she supervised 12-13 different projects. (H.R. Vol. I, p. 204). She also stated that her experience on the Board of Directors increased her ability to interact and communicate with men in a business-type situation. (H.R. Vol. I, pp. 205-206). As a result of the skills she gained from her Board position, she was promoted within a large insurance company to a supervisory position. (H.R. Vol. I, pp. 201-203).

As a final example from the record, the testimony of Ms. Sally Pederson indicates how the Jaycees have both fostered and promoted her ability and right to travel as well as her right to speak. Prior to coming to Minneapolis, Minnesota, Ms. Pederson had lived in Rochester, New York. There she had been employed by Eastman Kodak originally as a Lab Technician, working alone in a research lab (H.R. Vol. I, pp. 210-211).

Ms. Pederson testified that she had requested a job change from the lab to sales, but was denied the job because she was too young. She was told by her employer to join the Jaycees. (H.R. Vol. I, p. 211).

As a Rochester Jaycee, Ms. Pederson was able to serve on the Board of Directors for one year, a position which would no longer be available to her under the Jaycee By-Laws. (H.R. Ex. 1). Ms. Pederson testified that she went back to Kodak after her experience with the Rochester Jaycees and was

promoted to "Customer Support Representative" after interviews that dealt in part with her Jaycee activity. She testified that the "biggest reason" she received the new job was her involvement with the Jaycees. (H.R. Vol. I, p. 211).

Following her promotion, Ms. Pederson was transferred to Minneapolis, Minnesota. Her new job entailed training people who would be using Eastman Kodak photocopiers and keeping in contact with approximately 100 Eastman Kodak customers to make sure that they were satisfied with the product and service. (H.R. Vol. I, pp. 209-210).

Once in Minneapolis, Ms. Pederson joined the Minneapolis Jaycees and was elected a member of the Board of Directors and a Vice President. As Vice President, she oversaw four committees, composed of approximately 40 to 50 people (H.R. Vol. I, p. 208). Ms. Pederson testified that "without being a Director and a Vice President, I would never have gained the leadership skills and communication skills that I developed". (H.R. Vol. I, p. 214).

Ms. Pederson testified that she would be leaving for Rochester, New York, because of a new job she had applied for and received from Eastman Kodak. (H.R. Vol. I, p. 212). She testified that she interviewed for the job with seven men, that each interview was approximately 30 to 40 minutes long, and that approximately 10 minutes of each interview concerned her Jaycee activities. (H.R. Vol. I, pp. 212-213). Thus, not only her speaking skills, but also her opportunities for geographic mobility were enhanced by these types of Jaycee experiences, which the Jaycees wishes to reserve only for men.

Therefore, the record does in fact reveal how the enforcement of the Minnesota Human Rights Statute, so as to prevent the Jaycees from revoking charters of local chapters granting

women equal status, fosters and promotes both equal professional opportunities and, indirectly, more fundamental rights for actual and prospective women members. The record shows that for many women, exclusion from full membership in the Jaycees, with attendant opportunities for leadership positions, may be as professionally devastating as being excluded from a union was found to be in *Railway Mail Association v. Corsi*, 326 U.S. 88, 94 (1945).

II. The Minnesota Supreme Court Relied Upon Identifiable and Accepted Criteria in Determining the Scope of the Public Accommodation Section of Minnesota's Human Rights Act.

A. The Plain Language and Judicial Interpretation of the Minnesota Human Rights Act Leave No Vagueness as to Whether the Jaycees is a Public Accommodation Under the Act.

The Minnesota Human Rights Act defines "place of public accommodation" in the following manner:

> "'Place of public accommodation' means: A business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold or otherwise made available to the public."

Minn. Stat. § 363.01, Subd. 18 (1982).

In deciding the certified question put to it regarding whether the Jaycees organization fits within the above definition, the Minnesota Supreme Court relied upon two criteria for deciding in the context of a public accommodations statute,

whether a group is private or public. These criteria were (1) the selectiveness of a group in the admission of members; and (2) the existence of limits on the total size of the group's membership. *United States Jaycees v. McClure*, 305 N.W.2d 764, 770 (Minn. 1981). Applying those tests, the Court held that the Jaycees qualified as a "public business facility" by being "engaged in the business of seeking to advance its members and to add to their ranks by assiduously selling memberships in this State . . ." *Id.* at 774. The district court determined that the criteria for becoming a "public business facility" developed by the Minnesota Supreme Court from established case law were ones which a person of ordinary intelligence could understand and apply to his or her organization's particular situation. *United States Jaycees v. McClure*, 534 F. Supp. at 773.

The record in this case supports the determinations by the Minnesota Supreme Court and the district court that the Jaycees falls squarely within the statutory definition of a "public accommodation". The key aspects of that definition are that the entity in question be a "business facility" which offers "goods" to the "public".

First, the record reveals that the Jaycees not only sells memberships but sells a wide variety of other products such as plaques, T-shirts, watches, clocks, suitcases, pens and jewelry to the general public and to state and local Jaycee organizations. (H.R. Vol. I, pp. 78-79 & Vol. II, pp. 56-57 & Ex. 15). The annual report of the Jaycees (H.R. Exhibits 80 and 99) looks like that of many successful, profitmaking corporations. Success is measured by growth, which of course results in more revenues. (H.R. Vol. II, p. 61). In fact, growth is stressed by special awards for those who are the most successful in selling memberships. (D.C. pp. 64-65). Approximately 80% of the time of the Minnesota Jaycees President is

devoted to recruiting members or encouraging recruitment. (H.R. Vol. I, p. 46).

The record is also clear that a membership in the United States Jaycees is a "product", "good", "privilege", or "advantage" within the meaning of the Act. The Jaycees receives a fee for each membership sold through its chapters. (H.R. Vol. I, pp. 72-76). The membership that is sold is portrayed to prospective members not only as conveying the right to join with others, but also, it is portrayed as a vehicle by which the individual becomes a leader of tomorrow (D.C. pp. 67, 70) and a vehicle whereby a person can develop to his fullest potential and practice and refine his leadership and organizational skills (D.C. p. 67; H.R. Vol. I, p. 31).

In fact, the Jaycees *Recruitment Manual* states "most importantly, Jaycees offer every young man the opportunity for leadership, training and personal growth". (H.R. Ex. 24, p. 1). The letterhead on Jaycees stationery states in capital letters: "A Leadership Training Organization" (Pl.'s Ex. 23). Also see H.R. Ex. 33, a state "Jaycee" publication which states:

> "No matter what a man's occupation, he can be a leader. For 59 years now, Jaycees have helped young men develop their leadership abilities . . . Realize your potential . . . Be a leader for tomorrow . . . and today. Be a Jaycee."

Additional exhibits were discussed in the Minnesota Supreme Court's opinion. *See United States Jaycees v. McClure*, 305 N.W.2d 764, 769 (Minn. 1981).

Thus, it is clear that the Jaycees not only operates in many respects like a business, selling its products, including memberships, but that it also considers itself in business as such. Consequently, the Jaycees cannot claim that they did not realize that they are in a business of selling goods. Nor can they claim surprise that they are considered a public business, in light of the fact that the product—i.e., the memberships—they sell are indiscriminately offered and sold to the public.

For example, Mr. Lowell Larson, President of the Minnesota Jaycees, testified that the National Jaycees do not publish any criteria as to how members may be selected. In fact, he stated "I would feel that the National organization and the Minnesota Jaycee organization probably goes the opposite. It encourages membership [from] as many people and as diverse as possible." (H.R. Vol. I, p. 112).

Similarly reflecting the lack of selectiveness or restrictions on membership size is the testimony of Mr. Valdis Vavere, then President of the Minneapolis Jaycees. He testified that corporations are periodically contacted with the request to sponsor "a certain *number* of members from the organization". (Emphasis added.) (H.R. Vol. I, p. 125). Techniques for selling memberships even included door-to-door solicitations. (H.R. Vol. I, pp. 126, 127). Moreover, Mr. Vavere testified that there are no selection committees passing on the merits of the members, there are no background investigations of the members who apply, and, to his knowledge there has never been a membership rejection. (H.R. Vol. I, p. 135).

Finally, Mr. Vavere testified that the National organization has no membership criteria which local chapters are suggested to use. (H.R. Vol. I, pp. 135-136). In fact, he testified:

> . . . [W]e are in fact encouraged not to choose any kind of characteristics in terms of who we should and should not take, that anyone should be accepted without any value judgments on our part.

(H.R. Vol. I, p. 136).

Similarly, Mr. Dan Aberg, then President of the Saint Paul Jaycee Chapter, testified that in recruiting the Jaycees instruct the local chapters not to be "an elitist organization" and that "everyone should be considered". (H.R. Vol. I, p. 162).

Mr. Aberg also testified that the Saint Paul Chapter sold memberships by knocking on doors and going to shopping centers, that the Saint Paul Chapter attempts to sell memberships to "different diverse areas and ethnic backgrounds", and that a conscious effort is made not to sell memberships to people who are only within certain occupations. (H.R. Vol. I, p. 171).

There is apparently no dispute that the national organization has facilities where its memberships are sold, especially since memberships are sold through a local chapter organization, which is clearly a facility, and at various meeting places, such as hotels, apartment buildings and the like. (See H.R., Exhibits 13A, 13C, 13F and H.R. Vol. I, pp. 72-76).

In spite of the record described above, and along with the definitive determination by the Minnesota Supreme Court based on this record that the Jaycees is a "public accommodation" subject to the Minnesota Human Rights Act, the circuit court held the "public accommodation" section of the Act unconstitutionally vague because of the absence of criteria for establishing an organization's "private" status. *United States Jaycees v. McClure*, 709 F.2d 1560, 1578 (8th Cir. 1983). This determination was apparently based, in substantial part, on an unexplained statement in the opinion of the Minnesota Supreme Court that the Jaycees are demonstrably different from "private organizations such as the Kiwanis International Organization." *United States Jaycees v. McClure*, 305 N.W.2d 764, 771 (Minn. 1981).

The circuit court's determination in this regard should be reversed on the grounds advanced in Judge Lay's dissenting opinion. 709 F.2d at 1581-82. As Judge Lay pointed out, Kiwanis applies criteria for membership which are both selective and restrictive on the size of that organization's

membership.[5] Additionally, the record is bare of any evidence that the Kiwanis sells memberships which carry not only an entitlement to be a member of a certain group of people, but also the promise of assistance in becoming a leader and developing leadership skills, speaking skills, and organizational skills.

This *Amicus Curiae* also relies on the case law analysis included in Judge Lay's dissent, which references accepted principles of constitutional adjudication whereunder organizations like the Jaycees "who clearly fit within the definition of a 'place of public accommodation,' ha[ve] no standing to challenge the vagueness of [a] statute as construed and applied to hypothetical organizations not before [the court]." 709 F.2d at 1582 (Lay, J., dissenting).

Similar principles have been applied even in the case of "vagueness" challenges to criminal statutes. For example, in *Boyce Motor Lines, Inc. v. United States*, 342 U.S. 337, 340 (1952), this Court reached the following conclusion:

> "A criminal statute must be sufficiently definite to give notice of the required conduct to one who would avoid its penalties. . . . But few words possess the precision of mathematical symbols. . . . Consequently, no more than a

[5] Section 4. *Active Membership*

. . .

"b. The active membership of this club shall be composed of a cross section of those who are engaged in recognized lines of business, vocation, agriculture, institutional or professional life, or who having been so engaged, shall have retired. The number of members in any one given classification shall not exceed twenty percent (20%) of the total active membership.

c. No man shall be eligible to membership in this club who holds membership (other than honorary) in any other Kiwanis club or service club of like character."

. . .

(H.R. Ex. A)

> reasonable degree of certainty can be demanded. *Nor is it unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line.*" (Emphasis added).

Assuming that the Jaycees could reasonably contend that the question whether their membership policies and commercial orientation made them a "public accommodation" was a "close" one, a vagueness argument thus would still not be supportable even under the criminal law standard set out in the above quotation.

B. Readily Identifiable Criteria are Available to Limit the Scope of the Public Accommodations Section of the Minnesota Human Rights Act to Constitutionally Permissible Applications and Thereby Avoid Potential Overbreadth Concerns.

This *Amicus Curiae* strongly encourages this Court to review the appellate court's implicit determination of unconstitutional overbreadth, 709 F.2d at 1577, under the principles set forth in this Court's decision in *Broadrick v. Oklahoma*, 413 U.S. 601 (1973). In *Broadrick*, this court stated the general principle of, and limitations on, the "overbreadth" doctrine as follows:

> . . . any enforcement of a statute thus placed at issue is totally forbidden until and unless a limited construction or partial invalidation so narrows it as to remove the seeming threat or deterrence to constitutionally protected expression. Application of the overbreadth doctrine in this manner is, manifestly, strong medicine. *It has been employed by the court sparingly and only as a last resort.*

Facial overbreadth has not been invoked when a limiting construction has been or could be placed on the challenged statute." (Emphasis added).

Id. at 613.

As Judge Lay's dissenting opinion observes, "[t]he potential effect of this statute on protected associational choices is mere speculation." *United States Jaycees v. McClure*, 709 F.2d at 1583 (Lay, J., dissenting). In fact, the Minnesota Supreme Court's interpretation of the Act, which should receive great deference from this Court even in the face of the constitutional challenge, specifically stated that "[p]rivate associations and organizations—those, for example, that are selective in membership—are unaffected by Minn. Stat. § 363.01(18) (1980). Any suggestion that our decision today will affect such groups is unfounded." *United States Jaycees v. McClure*, 305 N.W.2d at 771.

Especially in light of this limiting construction by the Minnesota Supreme Court, it is difficult to understand how the Jaycees can claim that the Act would chill the First Amendment rights of other groups which are not public accommodations. The court noted that the factors making the Jaycees a public accommodation are the facts that it is a business facility, and that it sells and offers its products and memberships indiscriminately to the public. Further, the Court found that the product sold is not merely a membership, but also such professionally applicable rights and benefits which go along with that membership as the professed benefit to the member of becoming a "leader of tomorrow" and developing his or her potential to the fullest. The record in this case is simply devoid of examples of organizations with more selective membership criteria and limitations on numbers which engage in these same types of activities to the same extent as the Jaycees.

Ironically, many of the organizations cited by the Jaycees as an indication that speech of others would be chilled in light of the statute at issue and its interpretation by the Minnesota Supreme Court, do in fact have limiting criteria in their By-Laws as to the scope of membership which clearly differentiate them from the Jaycees and indicates that those groups would not be subject to the public accommodations statute.

The restrictive membership requirements contained in the Kiwanis International By-Laws have been discussed in the preceding section of this Brief and are set forth in footnote 5. *supra*. Similarly, the By-Laws of the Rotary organization which were also introduced by the Jaycees are clearly distinguishable from the Jaycees by reason of their membership criteria. Specifically, the constitution of the Rotary Club explicitly states that members must be, *inter alia*, adult males and must be in the upper management echelons of their companies. (H.R. Ex. F).

These restrictive membership criteria are clearly more restrictive than the membership criteria of the Jaycees and thus the Rotary would clearly be a private organization and not subject to the Minnesota Statute.

The by-laws of other organizations, which were introduced by the Jaycees into evidence, also show selectivity characteristics in membership criteria and rules, which the Jaycees do not maintain. Therefore, they are clearly distinguishable and do not fall within the scope of this statute as construed by the Minnesota Supreme Court.

For example, the Lions Club By-Laws indicate that membership may be by "invitation only" (H.R. Exhibit D, p. 13); the By-Laws of PEO Sisterhood impose a residency requirement and one that the member must have resided in the community for at least 12 months prior to becoming a member of

the local chapter (H.R. Exhibit 24, p. 39); an dthe By-Laws of the Junior League require that a member may only be a member of one Junior League chapter at a time (H.R. Exhibit C, p. 4). Finally, the By-Laws of the Optimist Club require membership to be a "cross section of the business, social and cultural life of the community." (H.R. Ex. G, Article V).

Thus, the Jaycees' overbreadth argument also fails to withstand careful scrutiny, since (1) the Minnesota Human Rights Act has been narrowly construed by the Minnesota Supreme Court; (2) the organizations which the Jaycees claim are potentially chilled by the statute are clearly distinguishable simply on the basis of their membership criteria; and (3) there is absolutely no evidence in the record indicating other similarities between the Jaycees and those other organizations.

III. The Minnesota Human Rights Act does not violate the Fourteenth Amendment's Equal Protection Clause.

The District Court did not consider the "equal protection" claim in the Jaycees' complaint, on the grounds that the Jaycees had "chosen not to pursue that claim." *United States Jaycees v. McClure*, 534 F. Supp. at 768 n. 6. In its Appellate Brief, the Jaycees condemned that decision, argued that the Appellate Court was fully empowered to determine this issue on appeal, and "defied" the State of Minnesota to offer a rational basis for different treatment under the law of the Kiwanis and Jaycees organizations. Brief for Plaintiff-Appellant at 47-48, *United States Jaycees v. McClure*, 709 F.2d 1560 (8th Cir. 1983).

Although the appellate court, like the district court, failed to address this issue, this *Amicus Curiae* will briefly address the equal protection issue in the event that this Court should consider the Jaycees' equal protection claim.

In *Police Dep't of Chicago v. Mosley*, 408 U.S. 92, 95 (1972), this Court stated as follows:

> "As in all equal protection cases . . . the crucial question is whether there is an appropriate governmental interest suitably furthered by the differential treatment."

In the case at hand, the "appropriate governmental interest"—that of securing for the citizens of the State of Minnesota equal access to places of public accommodation—is clearly an appropriate governmental interest, especially in light of its inextricable connection between that state interest and the personal, fundamental rights of Minnesota citizens fostered by the statutory anti-discrimination provisions. Thus, the only question is whether that interest is suitably furthered by differential treatment accorded to "private" organizations as opposed to "public accommodations", as this distinction has been drawn by the Minnesota Supreme Court.

This *Amicus Curiae* asserts that it is proper to accord private organizations differential treatment as compared to public organizations for two reasons. First, the Act, by its explicit terms, requires such a distinction. *See* Minn. Stat. § 363.03 (1982). Secondly, the Act is obviously narrowly tailored to achieve its legitimate objective in the case of organizations which by their membership policies and other activities have thrust themselves into the commercial marketplace, with minimal intrusion on constitutional rights of organizations which have not done so.

In other words, the stated governmental purpose is to assure that places of public accommodation do not deny goods and privileges to anyone on account of gender. Minn. Stat. § 363.12. This intent is furthered, since the Act explicitly prohibits discrimination on account of sex in places of public accommo-

dations. Minn. Stat. § 363.03, Subd. 3. The Act is narrowly tailored so that only public accommodations are explicitly affected by this Act, and not private accommodations. Thus, the dictates of this Court's decision in *Police Dep't of Chicago v. Mosley*, *supra*, have been satisfied.

As noted, the Jaycees in their Brief to the Court of Appeals challenged the Appellants to set forth any reason for distinguishing between "public" and "private" accommodations. This *Amicus* asserts that one reasonable basis to distinguish between public and private accommodations is that the State legislature may have concluded that the invidious effects of sex discrimination in public accommodations is far greater than that of such discrimination in private accommodations. Certainly, the record in this case confirms the wisdom of such a rationale in the case of the Jaycees.

Finally, this *Amicus* wishes to remind the Court that it has never required a State legislature to deal with all evils it perceives at once. As this Court stated in *Railway Express Agency v. State of New York*, 336 U.S. 106, 110 (1949), "it is no requirement of equal protection that all evils of the same genus be eradicated or none at all."

CONCLUSION

Based upon the arguments set forth in this Brief, Community Business Leaders respectfully supports Appellants' request herein that this Court reverse the decision of the United States Court of Appeals for the Eighth Circuit and make an express finding that Minnesota Statutes, § 363.03 (1982), as applied in this particular situation, is constitutional.

Respectfully submitted,

ELDON J. SPENCER, JR.
O'NEILL, BURKE, AND
O'NEILL, LTD.
(Counsel of Record)
MICHAEL B. BRAMAN
CHRISTINE L. MEUERS
800 Norwest Center
55 East Fifth Street
St. Paul, Minnesota 55101
(612) 227-9505